

**MARKS, O'NEILL, O'BRIEN,  
DOHERTY & KELLY, P.C.**

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**ATTORNEY FOR DEFENDANT  
F.C. KERBECK & SONS (improperly  
plead as F.C. Kerbeck Bentley)**

1929-107277 (MJB/JRS)

Samantha Carter

vs.

F.C. Kerbeck and Sons (improperly plead as F.C.  
Kerbeck Bentley)

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

DOCKET NO. 1:19-cv-18035

CIVIL ACTION

Answering Defendant, F.C. Kerbeck & Sons (improperly plead as F.C. Kerbeck Bentley),  
by way of Answer to Plaintiff's Complaint, responds as follows:

**I.**

**JURISDICTION, VENUE & NOTICE**

1. Denied. Averments contained in this paragraph state conclusions of law to which  
no answer is required.

2. Denied. Averments contained in this paragraph state conclusions of law to which  
no answer is required.

3. Denied. Averments contained in this paragraph state conclusions of law to which  
no answer is required.

4. Denied. Averments contained in this paragraph state conclusions of law to which  
no answer is required.

5. Denied. Averments contained in this paragraph state conclusions of law to which no answer is required.

**WHEREFORE**, Answering Defendant demands judgment in their favor and against all other parties.

## **II.**

### **PARTIES**

6. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

7. Denied as stated. F.C. Kerbeck & Sons has a principle address located at 100 Route 73 North, Palmyra, NJ 08065.

8. The allegations contained in this paragraph of the Complaint are not directed to the Answering Defendant, and, accordingly, Answering Defendant offers no response to same. To the extent that an answer is deemed required, Answering Defendant denies any and all negligence or other actionable conduct to the extent such is alleged against Answering Defendant in this paragraph.

**WHEREFORE**, Answering Defendant demands judgment in their favor and against all other parties.

## **III.**

### **FACTUAL BACKGROUND**

9. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

10. Denied.

11. Denied as stated. Admitted that Plaintiff test drove an Aston Martin.

12. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

13. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

14. Denied that failed to receive a receipt and that she was ignored. As to the remaining averments in this paragraph, after reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

15. Denied.

16. The allegations contained in this paragraph of the Complaint are not directed to the Answering Defendant, and, accordingly, Answering Defendant offers no response to same. To the extent that an answer is deemed required, Answering Defendant denies any and all negligence or other actionable conduct to the extent such is alleged against Answering Defendant in this paragraph.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

22. The allegations contained in this paragraph of the Complaint are not directed to the Answering Defendant, and, accordingly, Answering Defendant offers no response to same. To the extent that an answer is deemed required, Answering Defendant denies any and all negligence or other actionable conduct to the extent such is alleged against Answering Defendant in this paragraph.

23. The allegations contained in this paragraph of the Complaint are not directed to the Answering Defendant, and, accordingly, Answering Defendant offers no response to same. To the extent that an answer is deemed required, Answering Defendant denies any and all negligence or other actionable conduct to the extent such is alleged against Answering Defendant in this paragraph.

24. The allegations contained in this paragraph of the Complaint are not directed to the Answering Defendant, and, accordingly, Answering Defendant offers no response to same. To the extent that an answer is deemed required, Answering Defendant denies any and all negligence or other actionable conduct to the extent such is alleged against Answering Defendant in this paragraph.

25. Denied.

26. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

27. (no averment as this number was skipped in the Complaint).

28. Denied.

29. Denied.

30. Admitted that Plaintiff's funds were returned to her

31. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

32. Denied.

33. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

34. Denied.

35. Denied.

36. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

**FIRST CLAIM: 42 USC § 1981**

**Engaged in blatant racial discrimination**

24 (sic). Denied. Averments contained in this paragraph state conclusions of law to which no answer is required.

**SECOND CLAIM: 15 USC § 1691**

**Adverse Action Against Plaintiff**

No response to this averment is required as the claim was dismissed by the Court pursuant to Order dated 9/25/20.

**VII.**

**PRAYER FOR RELIEF**

81. Denied. As to Plaintiff's damages, after reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial. By way of further answer as to Plaintiff's damages, it is specifically denied that any such damages were caused by the carelessness, recklessness, or negligence of Answering Defendant.

**WHEREFORE**, Answering Defendant demands judgment in their favor and against all other parties.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over the subject matter of Plaintiff's Complaint.

**THIRD AFFIRMATIVE DEFENSE**

The allegations described in the Complaint were caused wholly or partly by the negligence or intentional acts of Plaintiff, and Plaintiff is barred from recovery or said recovery is reduced thereby.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff failed to effect sufficient service of process upon the Answering Defendant.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint should be dismissed for failure to cause a Summons to be issued within ten (10) days after filing the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable Statute of Limitations and/or Laches.

**SEVENTH AFFIRMATIVE DEFENSE**

The Answering Defendant owed no duty to Plaintiff at the time of Plaintiff's alleged injuries.

**EIGHTH AFFIRMATIVE DEFENSE**

The Answering Defendant performed each and every duty owed to Plaintiff.

**NINTH AFFIRMATIVE DEFENSE**

At all times relevant hereto, the Answering Defendant acted in a reasonable and proper manner.

**TENTH AFFIRMATIVE DEFENSE**

All services rendered by the Answering Defendant were rendered in accordance with accepted standards and practices and not in a negligent manner.

**ELEVENTH AFFIRMATIVE DEFENSE**

Answering Defendant at all times relevant hereto complied with all federal, state and local statutes, regulations and/or ordinances in effect.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff is estopped from enforcing more stringent regulations and/or requirements than were in effect at the time of the alleged offense.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Answering Defendant claims the benefit of any privileges or immunities available under statutory and/or common law whether Local, State or Federal law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff are barred by her failure to mitigate damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

If the damages of Plaintiff are true and proven, which are denied, then such damages were caused by conditions over which the Answering Defendant had no control.

**SIXTEENTH AFFIRMATIVE DEFENSE**

If the damages of Plaintiff are true and proven, which are denied, then such damages were not caused by any conduct of Answering Defendant, which was secondary and passive, but were caused by the primary and active conduct of third parties over whom the Answering Defendant had no control.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff are barred in whole or in part by the Entire Controversy Doctrine.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff are barred by the doctrines of arbitration and award, estoppel, res judicata, and/or waiver.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred and/or limited due to the material acts, statements, omissions, representations, and misrepresentations on which Answering Defendant relied to its detriment.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred by her failure to cooperate with Answering Defendant.



**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred and/or limited by the provisions of 42 U.S.C. §1981.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

If any contract was breached, it was breached by Plaintiff and not Answering Defendant.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred and/or limited by avoidable consequences.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff assumed the risk.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by statutory and/or common law.

**TWENTY-SIX AFFIRMATIVE DEFENSE**

Answering Defendants did not racially discriminate against Plaintiff.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Answering Defendant hereby reserves the right to interpose such other defenses as discovery may disclose.

**DEMAND FOR SERVICE OF PLEADINGS AND DISCOVERY**

Pursuant to *Fed R. Civ. P.* 26 and 34, the undersigned hereby makes a continuing demand that each party provide copies of any pleadings, discovery request, or other papers or response thereto.

**DEMAND FOR PRODUCTION OF DOCUMENTS**

Pursuant to *Fed. R. Civ. P.* 34, Answering Defendant hereby demands production of all documents referred to in the Complaint within thirty (30) days of the date of service of this demand.

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

I, to the best of my knowledge, do hereby certify that this matter is not the subject of any other Cause of Action pending in any other Court, or pending Arbitration Proceeding or Cause of Action anticipated.

**DESIGNATION OF TRIAL COUNSEL**

**PLEASE TAKE NOTICE** that Melissa J. Brown, Esquire is hereby designated trial counsel.

**JURY DEMAND**

Defendant, F.C. Kerbeck & Sons hereby demands a trial by jury on all issues.

**MARKS, O'NEILL, O'BRIEN,  
DOHERTY & KELLY, P.C.**

/s/ Melissa J. Brown  
Melissa J. Brown, Esquire  
Attorney for Defendant,  
F.C. Kerbeck & Sons

Date: October 13, 2020